

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----x
FELICE MILLER,

Plaintiff,

-against-

BATESVILLE CASKET CO.,

Defendant.
-----x

SUMMARY ORDER
02 -CV- 5612 (DLI)(ARL)

DORA L. IRIZARRY, United States District Judge:

On July 23, 2007, the court granted defendant Batesville Casket Company, Inc.’s motion for summary judgment and dismissed plaintiff Felice Miller’s claims of gender discrimination and retaliation. *See Miller v. Batesville Casket Co.*, 02-CV-5612, 2007 WL 2120371 (July 23, 2007 E.D.N.Y.). The court also ordered that “[t]he complaint is dismissed without costs to either party.” *Id.* at *13. The Second Circuit affirmed the court’s judgment, but vacated and remanded the court’s order on costs because the court “failed to articulate any reason for its decision not to award costs to [defendant].” *Miller v. Batesville Casket Co.*, 312 Fed. App’x. 404, 407 (2d Cir. 2009) (“Hence, we vacate and remand to give the District Court an opportunity to explain its decision to dismiss the case without costs to either party.”).

Under Rule 54(d)(1) of the Federal Rules of Civil Procedure, “costs—other than attorney’s fees—should be allowed to the prevailing party.” There is no question that defendant was the “prevailing party” here. *See Miller v. Batesville*, 312 Fed. App’x. at 407. Under Rule 54.1 of the Local Rules of the United States District Court for the Eastern District of New York, defendant must request such costs “[w]ithin thirty (30)

days after the entry of final judgment, or, in the case of an appeal by any party, within thirty (30) days after the final disposition of the appeal, unless this period is extended by the court for good reason shown” In this instance, the court erroneously denied costs before the period for defendant to request such costs under Rule 54(d)(1) and Local Rule 54.1 had elapsed. Therefore, defendant shall have the opportunity to request such costs according to the following briefing schedule: (1) defendant shall file its request by August 17, 2009; (2) plaintiff shall file its opposition by September 4, 2009; and (3) defendant shall file its reply, if any, by September 18, 2009. The parties may request changes to this briefing schedule by filing a joint letter electronically.

SO ORDERED

DATED: Brooklyn, New York
 July 21, 2009

 /s/
 DORA L. IRIZARRY
 United States District Judge